

IN THE SENATE OF THE UNITED STATES.

MARCH 30, 1880.—Ordered to be printed.

Mr. BURNSIDE, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill S. 1550.]

*The Committee on Military Affairs, to whom was referred the letter of the Secretary of War transmitting a communication from the commissioners of the Soldiers' Home, in Washington, D. C., asking for an amendment to section 4820 of the Revised Statutes, have had the same under consideration, and beg leave to submit the following report:*

The letter of the Secretary of War and the communication from the commissioners of the Soldiers' Home are as follows:

WAR DEPARTMENT,  
Washington City, January 28, 1880.

The Secretary of War has the honor to transmit, for such action as Congress in its wisdom may deem proper, the accompanying request from the commissioners of the Soldiers' Home in this city, for an amendment to section 4820, Revised United States Statutes.

Under the law embodied in the section mentioned, the Soldiers' Home has received as a part of its supposed proper and necessary revenue the money accruing to soldiers as pensioners while they continued voluntarily to be inmates. This revenue has been suspended during the pendency for more than a year past of a decision upon the claim of one of the inmates to receive his pension and apply it to his personal use. This claim has been sustained by the Supreme Court through a construction placed upon the language of the section hereinbefore referred to, which differed from that of the original statute on which it was based.

It is for Congress in its wisdom to determine whether it is better to amend the existing statute in the manner requested by the commissioners, or to make other provision of law in compensation to the Home for its loss of revenue.

ALEX. RAMSEY,  
Secretary of War.

The PRESIDENT  
of the United States Senate.

OFFICE OF THE BOARD OF COMMISSIONERS OF THE  
SOLDIERS' HOME, ROOM 2, WINDER BUILDING,  
Washington, D. C., January 21, 1880.

SIR: The commissioners of the Soldiers' Home have the honor to request that legislation may be obtained from Congress necessary to the amendment of section 4820, Revised United States Statutes, so that the law which was revised and consolidated in said section may continue to operate without being changed by such revision.

Under the statute previous to the revision, a plain and positive enactment (section 6 of the act making appropriation for the support of the Army, approved March 3, 1859) required—

“That all pensioners on account of wounds or disability incurred in the military service shall transfer and surrender their pensions to the institution (the Soldiers’

Home) for and during the time they may remain therein and voluntarily continue to receive its benefits."

Section 5 of the act establishing the institution, approved March 3, 1851, provided—"That any pensioner on account of wounds or disability incurred in the military service, although he may not have contributed to the funds of the institution, shall be entitled to all the benefits herein provided upon transferring his pension to said asylum (afterward changed to Soldiers' Home) for and during the period that he may voluntarily continue to receive such benefits."

These two sections covered all cases of pensioners except those who might receive pensions for service alone or some reason *other than disability incurred in service*, and these excepted ones were not entitled to the benefits of the Home. The pensioners, then, are of two classes: 1st, those pensioned on account of disability; and 2d, those pensioned for service or other cause, such as the survivors of the war of 1812. The first class may be, in this connection, divided into two kinds, those who contributed to the funds of the Home and those who did not. Those who contributed were entitled to the benefits of the Home under the general terms of the law establishing it, while those who did not contribute were entitled by specific mention in that law. The two sections quoted from the statutes of 1851 and 1859 are the ones consolidated in section 4820 of the Revised Statutes, which reads as follows:

"The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto. But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits."

Here, again, in the sections preceding the one above quoted, pensioners for disability who were contributors are entitled to the benefits of the Home under the general terms of the law, and in the section quoted those who were not contributors are entitled by specific mention, thus embracing the two kinds in the first class of pensioners already mentioned.

The commissioners have held that the words "*but all such pensioners*" embraced the first class, or *all* those pensioned for disability, and constructively excluded the second class, or those pensioned for other reasons; but a test case having been recently brought on appeal before the United States Supreme Court, it is understood the decision has been made that under the section (4820 Revised Statutes), pensioners for disability *who have been contributors* to the funds of the Home cannot be required to surrender their pensions while inmates. Under this construction, and unless the section is amended by Congress by striking out the word "*such*" where it occurs in the section, the Home will be deprived of a revenue which is absolutely necessary for its maintenance, and for which the pensioners, while inmates of the Home, receive more than they could possibly obtain with their pensions if dependent alone upon them.

The Home is sustained by the contributions of 12½ cents per month from the pay of each soldier in the Army, from the stoppages and fines by courts-martial, from forfeitures, and from moneys due the estates of deceased soldiers unclaimed for three years. The revenue from these sources, together with the pensions now in question, have of late been barely sufficient to meet current expenses, which have been guarded with scrupulous care. To cut off a part of the revenue will make the failure of the institution only a matter of time.

The question of discipline at the Home and the peace of the city of Washington are of only less importance in this connection than the life of the institution. The money paid on account of pensions to inmates who are already supplied with every needed comfort will almost entirely be squandered for liquor and convert scores of peaceable men into demons for whose control an armed guard will have to be used, and for whose benefit regulations will have to be adopted, which will entirely destroy in the Home all the features which now make it a place of peace and comfort for those who have given the strength of their years to the service and now require the care due them in their old age.

In conclusion, it must be urged that the revision of the laws was not intended to change them in the point now so unfortunately turned against the life of the Home, and it is earnestly hoped an amendment striking out the word hereinbefore mentioned will be speedily passed, and that it will have force and effect from the date of the revision.

Very respectfully, your obedient servants,

J. K. BARNES,  
*Surgeon-General, U. S. A.*

E. D. TOWNSEND,  
*Adjutant-General, U. S. A.*

R. MACFEELY,  
*Commissary-General of Subsistence, U. S. A.*

The Hon. SECRETARY OF WAR.

This institution, known as the Soldiers' Home, was organized by the act of Congress of March 3, 1851, which act was amended March 3, 1859, and admits the following classes of persons:

- 1st. Soldiers of 20 years' service in the regular Army;
- 2d. Disabled soldiers and discharged soldiers of the regular and volunteer armies;
- 3d. Invalid and disabled soldiers of the war of 1812, and subsequent wars.

Its support is derived from the following sources:

1. Contributions of  $12\frac{1}{2}$  cents per month from the pay of each soldier in the regular Army;
2. By stoppages and fines by courts-martial and forfeitures from desertion;
3. Money belonging to the estates of deceased soldiers remaining unclaimed for three years;
4. The individual donations for the use of the institution; and
5. The pensions of certain classes of soldiers who become inmates of the Home.

An error touching the assignment of pensions was made in the compilation of the Revised Statutes which deprives the Home of a considerable portion of its income. The act of March 3, 1859, provided—

That all pensioners on account of wounds or disability incurred in the military service shall transfer and surrender their pensions to the Soldiers' Home for and during the time they may remain therein and voluntarily continue to receive its benefits.

The Revised Statutes combine the above clause with a clause of the act of March 33, 1851, in section 4820, as follows:

The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto. But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits."

Soon after the enactment of the Revised Statutes a claim was made and sustained by the Pension Bureau that the introduction of the word "such" before the word "pensioners" in the section of the Revised Statutes above quoted, relieved from the requirement to assign their pensions that class of inmates who have contributed to the funds of the Soldiers' Home. The commissioners of the Home resisted this construction. The question was referred to the Attorney-General by the Secretary of the Interior, and the Attorney-General sustained the construction of the commissioners, in an opinion dated November 22, 1877. The matter was then taken to the Court of Claims and a judgment by that tribunal obtained, in the case of Charles Bowen *vs.* The United States, sustaining the construction of the Commissioner of Pensions and overruling those of the commissioners of the Home and the Attorney-General. An appeal was taken to the Supreme Court of the United States, which court, in the October term, 1879, affirmed the judgment of the Court of Claims.

The accompanying bill will, if it passes Congress, restore the law to the position in which it stood before the enactment of the Revised Statutes. The exemption granted to one class of pensioners by the law, as it stands now, works great inequality and injustice to other inmates of the Home. The pensions vary in amount from \$15 to \$50 a month. A soldier who has paid  $12\frac{1}{2}$  cents per month for the support of the Home for a single year previous to his admission retains his pension, whilst another who has not made such contribution is required to surrender his.

The important change made in the law by the Revised Statutes was not asked for by any class of pensioners, and was manifestly not intended to be made by Congress. The double bounty which is thus conferred upon this class of pensioners is not required by them. The intention of the law regulating the Home should be to give to the disabled soldier his choice of support in the Home or support outside of the Home by his pension, not both.

The effect of giving the control of a considerable sum of money to portions of the inmates whilst the others are deprived of any such luxury is disastrous to the discipline of the institution.

Your committee, therefore, beg leave to report the accompanying bill, and recommend its passage.